



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

May 3, 2006

**MEMORANDUM**

TO: The Commission

FROM: Lawrence H. Norton  
General Counsel

Rosemary C. Smith  
Associate General Counsel

Brad C. Deutsch  
Assistant General Counsel

Jonathan M. Levin  
Senior Attorney

Esa L. Sferra  
Attorney

Subject: Draft AO 2006-16

Attached is a proposed draft of Advisory Opinion 2006-16. The subject advisory opinion request was made public on April 28, 2006, and therefore the deadline for written comments on the request itself is May 8, 2006. *See* 2 U.S.C. 437f(d); 11 C.F.R. 112.3(e). OGC has also set May 8, 2006, as the deadline for comments on the attached draft. OGC plans to circulate a draft of Advisory Opinion 2006-16 as a tally-vote item on May 9, 2006.

Attachment

## **AO DRAFT COMMENT PROCEDURES**

The Commission permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel.

Today, DRAFT ADVISORY OPINION 2006-16 is available for public comments under this procedure. It was requested by, Richard E. Coates, Esq. on behalf of Florida State Representative Nancy Detert.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 5:30 pm (Eastern Time) on May 8, 2006.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

### **CONTACTS**

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2006-16, contact the Public Records Office at (202) 694-1120 or (800) 424-9530.

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

### **MAILING ADDRESSES**

Commission Secretary  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Rosemary C. Smith  
Associate General Counsel  
Office of General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

1 ADVISORY OPINION 2006-16

2  
3 Richard E. Coates, Esquire  
4 200 West College Avenue, Suite 311 B  
5 Tallahassee, FL 32301

**DRAFT**

6  
7 Dear Mr. Coates:

8 We are responding to your advisory opinion request on behalf of Florida State  
9 Representative Nancy Detert, concerning the application of the Federal Election Campaign Act  
10 of 1971, as amended (“the Act”) and Commission regulations, to the reimbursement and  
11 reporting of \$94,616.90 in funds misappropriated by the former treasurer of the Campaign to  
12 Elect Nancy Detert (“the Detert Committee”). The Detert Committee has already accepted a  
13 partial reimbursement in the amount of \$67,450, representing funds that were not spent by the  
14 former treasurer. You ask whether the Detert Committee may also accept reimbursement of the  
15 remaining \$27,166.90 from funds that have been provided to the former treasurer by his parents.

16 The Commission concludes that the Detert Committee may immediately accept the  
17 \$27,166.90.<sup>1</sup> As discussed below, the Detert Committee should report all misappropriated funds  
18 as an “Other Disbursement,” and report any reimbursement separately as an “Other Receipt” on  
19 its July Quarterly Report.

20 ***Background***

21 The facts presented in this advisory opinion are based on your letters received on April  
22 24 and April 28, 2006, and an e-mail communication on May 3, 2006.

23 Ms. Detert is a candidate for the Republican nomination for the U.S. House of  
24 Representatives from the 13<sup>th</sup> Congressional District of Florida. In June 2005, Ms. Detert  
25 appointed Randy Maddox to be the treasurer of her principal campaign committee, the Detert

Committee.<sup>2</sup> On April 3, 2006, Randy Maddox “misappropriated \$94,616.90, via an unauthorized wire transfer” from the Detert Committee to his personal bank account. Two days later, he withdrew the funds from his bank account and took the funds with him to Argentina. Ms. Detert was informed of the misappropriation on April 9, 2006.<sup>3</sup>

On April 13, 2006, Randy Maddox returned to the United States with \$67,450 in cash, which was then deposited into a bank account. On that same date, Randy Maddox’s parents, Robert and Ingrid Maddox, wishing to aid their son, applied for a home equity loan. On April 14, 2006, Ingrid Maddox obtained a bank check for \$94,616.90, consisting of the \$67,450 deposited on the previous day and \$27,166.90 in funds drawn from the parent’s home equity loan, and delivered it to her son’s attorney, Mark Reinhold. Mr. Reinhold placed the funds in his client trust account where the disposition of the funds is within Randy Maddox’s sole discretion. On April 28, 2006, Ms. Detert accepted \$67,450 from the client trust account and deposited the funds into the Detert Committee’s account, leaving \$27,166.90 of Randy Maddox’s funds in his attorney’s client trust account.

Ms. Detert has notified the Federal Bureau of Investigation of the misappropriation and has appointed a new committee treasurer to replace Randy Maddox.

### ***Questions Presented***

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<sup>1</sup> Similarly, the Commission concludes that the Detert Committee’s acceptance of the \$67,450 was permissible. *See* footnote 4.

<sup>2</sup> The Detert Committee filed its Statement of Organization with the Commission on June 27, 2005.

<sup>3</sup> At the time of the misappropriation, the Detert Committee had raised approximately \$125,000 and had expended some funds for campaign expenses. You indicate that the misappropriation left the Committee without sufficient funds to conduct Ms. Detert’s campaign effectively; the copy of the wire transfer document attached to your April 24 letter discloses that only \$3,921.82 remained in the account after the transfer. You note that Ms. Detert is honoring the Rules of the Florida House of Representatives by not personally soliciting campaign contributions during the current State legislative session, which runs through May 5, 2006. *See* Rules of the Florida House of Representatives, Rule 15.3(b)(1).

1           1. *May the Detert Committee accept and deposit reimbursement of misappropriated*  
2     *funds from the \$27,166.90 that remains in Randy Maddox's attorney's client trust account?*

3           2. *How should the Detert Committee report the misappropriated funds and the receipt of*  
4     *any reimbursement?*

5     ***Legal Analysis and Conclusions***

6           1. *May the Detert Committee accept and deposit reimbursement of misappropriated*  
7     *funds from the \$27,166.90 that remains in Randy Maddox's attorney's client trust account?*

8           Yes, the Detert Committee may immediately accept and deposit the \$27,616.90 from  
9     funds held in the client trust account as a reimbursement by Randy Maddox of misappropriated  
10    funds.<sup>4</sup>

11          Unlike the \$67,450 that has already been reimbursed by Randy Maddox to the Detert  
12    Committee, the funds provided by Mr. Maddox's parents replace a portion of the  
13    misappropriated funds that Mr. Maddox spent and therefore are not directly traceable back to the  
14    misappropriated funds. Nevertheless, where Randy Maddox's parents have provided their son  
15    with funds solely in an effort to mitigate potentially severe criminal liability and financial  
16    jeopardy for their son, the provision of funds by Mr. Maddox's parents is not for the purpose of  
17    influencing a Federal election and would not constitute a contribution by his parents to the Detert

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<sup>4</sup> Although the Detert Committee has already accepted a reimbursement of \$67,450 from Mr. Maddox, which as past activity is not the subject of this advisory opinion (*see* 11 CFR 112.1(b)), the Commission notes that the acceptance of these funds was permissible because the returned \$67,450 was directly traceable to the very funds misappropriated from the Detert Committee. Thus, the transfer of these funds from the client trust account to the Detert Committee was not a contribution to the committee but merely a return of misappropriated funds. *See* Advisory Opinion 2000-26 (Citizens for Deckard) (regarding traceable funds); *see also* Advisory Opinion 1991-38 (DeConcini '88 Committee and DeConcini '94 Committee) (regarding the treatment of repayments of embezzled funds).

1 Committee.<sup>5</sup> Randy Maddox's parents are only interested in aiding their son, not the Detert  
2 Committee. The fact that the victim of the misappropriation, and hence the ultimate recipient of  
3 the restitution, is the Detert Committee is merely incidental to Mr. Maddox's parents providing  
4 the funds to their son.

5 *2. How should the Detert Committee report the misappropriated funds and its receipt of*  
6 *any reimbursement?*

7 The misappropriation of the \$94,616.90 by Randy Maddox constituted a reduction in the  
8 Detert Committee's cash on hand at that time and the committee should report the total amount  
9 as an "Other Disbursement" on its 2006 July Quarterly Report. The Detert Committee should  
10 include this amount in the total of "Other Disbursements" on Line 21 of the Detailed Summary  
11 Page. The Detert Committee should also itemize the disbursement by disclosing, on Schedule B,  
12 the name and address of Randy Maddox as the recipient, and the amount, and date of the  
13 misappropriation. In addition, the Detert Committee should provide a brief description of the  
14 circumstances. *See* 2 U.S.C. 434(b)(4)(G) and (6)(A); 11 CFR 104.3(b)(2)(vi) and (4)(vi); *see*  
15 *also* Advisory Opinion 1989-10 (DeConcini '88 Committee).

16 The Detert Committee should report separately the receipt of both the \$67,450 and the  
17 \$27,616.90, each as an "Other Receipt" on its July Quarterly Report. The Detert Committee  
18 should include both amounts in the total of "Other Receipts" on Line 15 of the Detailed  
19 Summary Page. The Detert Committee should also itemize these receipts by disclosing, on

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20 <sup>5</sup> Randy Maddox is not himself a Federal candidate and this situation does not involve any payment by parents to assist a candidate-child with personal expenses that occur during his or her candidacy, which may constitute a contribution by the parents to the candidate. *See* 11 CFR 113.1(g)(6).

